

UNITED STATES COURT OF APPEALS

Filed 12/9/96

FOR THE TENTH CIRCUIT

ROBERT H. AULL, on behalf of
himself and all other similarly
situated,

Plaintiff - Appellee,

No. 96-1474

v.

CAVALCADE PENSION PLAN;
CAVALCADE PENSION PLAN
COMMITTEE; KEVIN LEWIS;
CARLENE STEWART; ALTON
SMITH; DONALD DODSON;
FURR'S/BISHOP'S, INC.;
FURR'S/BISHOP'S CAFETERIAS,
L.P.; CAVALCADE & CO., INC.; and
CAFETERIA OPERATORS, L.P.,

Defendants - Appellants,

and

MICHAEL J. LEVENSON; KMART
CORPORATION; and KMART
CORPORATION EMPLOYEES'
RETIREMENT PLAN,

Defendants.

ORDER AND JUDGMENT¹

¹ This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before TACHA, KELLY, and BRISCOE, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Before us is defendants-appellants' appeal from the district court's October 4, 1996 order denying their motion for protective order seeking to bar discovery of all accountant/actuary - client privileged matters. Defendants-appellants have also filed a motion for stay of the district court's order pending disposition of their appeal.

Generally, pretrial discovery rulings are interlocutory and are not appealable as final orders. See F.T.C. v. Alaska Land Leasing, Inc., 778 F.2d 577, 578 (10th Cir. 1985). This is true even if the discovery at issue is claimed to be privileged. Boughton v. Cotter Corp., 10 F.3d 746, 750 (10th Cir. 1993). This court ordered the parties to show cause why this appeal should not be summarily dismissed for lack of jurisdiction. Upon review of the parties' responses, we find the order being appealed is interlocutory and not appealable as a final order. Because we conclude this appeal is premature, we do not consider defendants-

appellants' motion for stay pending appeal. The appeal is DISMISSED for lack of jurisdiction.

Entered for the Court

Deanell Reece Tacha
Circuit Judge